



RESOLUTION NO.01-2013

APPROVAL TO ISSUE AN OPINION ON SECTION 4 OF THE REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184

WHEREAS, Republic Act (RA) No. 9184, entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes,” took effect on 26 January 2003, while its revised Implementing Rules and Regulations (IRR) took effect on 2 September 2009;

WHEREAS, the Government Procurement Policy Board (GPPB), under Section 63 of RA 9184 and its IRR, is mandated to formulate and amend public procurement policies, rules and regulations, and amend the IRR, whenever necessary;

WHEREAS, the GPPB-TSO received a letter from the Department of National Defense (DND) on 22 October 2012 requesting for written guidance from the GPPB in using Section 4 of the IRR of RA 9184 as basis of the DND to procure (1) 50W AV Configuration Radios of the Philippine Army; and, (2) the Marfor Imagery and Targeting Support System of the Philippine Marine Corps under the US Foreign Military Sales Program;

WHEREAS, in its 1st Joint Meeting held on 21 January 2013, the Inter-Agency Technical Working Group (IATWG) and the GPPB discussed the legal bases of entering into a Treaty or International or Executive Agreement and in interpreting Section 4 of RA 9184 and its IRR, including discussions of applicable provisions of the 1987 Philippine Constitution and Executive Order (EO) No. 459¹;

WHEREAS, Section 4 of RA 9184, on Scope and Application, provides in part that “[a]ny treaty or international or executive agreement affecting the subject matter of the Act to which the Philippine Government is a signatory shall be observed.”

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the following:

1. To issue a Policy Matter Opinion clarifying that:
 - a. RA 9184 and its IRR apply to all government procurement activities, regardless of source of funds, except when a Treaty or International or Executive Agreement expressly provides the use of foreign government/foreign or international financing institution procurement guidelines and procedures;

¹ Providing for the Guidelines in the Negotiation of International Agreements and its Ratification issued on 25 November 1997.

- b. The negotiating panel shall explain in writing the reasons why the applicable Treaty or International or Executive Agreement did not adopt the use of RA 9184 and its IRR, or selection by way of competitive bidding;
- c. Prior written confirmation/guidance from the GPPB is not necessary for a government agency to proceed with its procurement under any Treaty or International or Executive Agreement as long as the conditions under Section 4 of RA 9184 and its IRR are present;
- d. The Treaty or International or Executive Agreement was negotiated in accordance with EO 459; and,
- e. The Department of Foreign Affairs shall determine whether the agreement is an Executive Agreement or a Treaty pursuant to EO 459.

This resolution shall take effect immediately.

APPROVED this 21st day of January 2013 at Pasig City, Philippines

(Sgd.)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(Sgd.)

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

(Sgd.)

DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

(Sgd.)

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

(Sgd.)

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(Sgd.)

**DEPARTMENT OF TRADE AND
INDUSTRY**

(Sgd.)

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

(Sgd.)

PRIVATE SECTOR REPRESENTATIVE

Attested by:

(Sgd.)

DENNIS S. SANTIAGO
Board Secretary, GPPB
Executive Director, GPPB-TSO